

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

11/16/04  
PL-1  
32090

FILE: B-219713

DATE: August 27, 1985

MATTER OF: IBI Security Service, Inc.

## DIGEST:

1. Protester is not an interested party to challenge agency's disqualification of its bid as nonresponsive where protester--at best, the ninth low bidder--does not contest lower bidders' eligibility for award, and thus is not in line for award even if its protest were sustained.
2. Protest that invitation for bids (IFB) is ambiguous is untimely where not filed with GAO before bid opening. Protester's letter to agency requesting clarification of IFB, received by agency before bid opening, does not constitute a protest because it lacks any expression of dissatisfaction or request for corrective action.

IBI Security Service, Inc. protests any award under invitation for bids (IFB) No. SPD 85-23, issued by the Immigration and Naturalization Service (INS) for security guard services at the INS Service Processing Center, Florence, Arizona. The protester contends that its bid was improperly rejected as nonresponsive and that the IFB is ambiguous in several respects. We dismiss the protest.

The IFB was issued on June 3, 1985, with bid opening set for July 3. Two amendments to the IFB were issued; the second amendment, effective July 3, changed various provisions of the IFB and extended the bid opening date to July 18. At bid opening on July 18, two bids were received from the protester, and, as a result, the contracting officer tentatively disqualified the protester as nonresponsive. The contracting officer states that should

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IBI's bid, which is not low, become eligible for award, she will forward both bids to INS' legal counsel for a formal decision regarding responsiveness.<sup>1/</sup>

The protester states that its first bid, dated July 1, was mailed before issuance of the second amendment on July 3, in order to meet the original bid opening date of July 3. The protester's second bid, dated July 10 and received by the agency on July 15, contained revisions to its first bid made in response to the July 3 amendment. The protester maintains that it was improper for INS to disqualify it as nonresponsive and argues that it should be considered for award based on its second bid.

According to the bid abstract, the protester is the ninth low bidder based on its second bid; based on its first bid, it is fourteenth low. The protester has not contested the eligibility for award of any of the lower bidders. As a result, even if we were to sustain IBI's protest, IBI would not be in line for award of the contract. In these circumstances, the protester is not an interested party and consequently we will not consider this ground of its protest. Gem Services, Inc., B-217038.2, Feb. 7, 1985, 85-1 CPD ¶ 159; Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1985).

The protester's second contention is that certain provisions in the IFB are unclear. Despite its ranking as, at best, ninth low bidder, IBI is an interested party for purposes of raising this issue since if its contention were found to have merit, the remedy would be cancellation of the current IFB and resolicitation. See Swintec Corp., et al., B-212395.2, et al., Apr. 24, 1984, 84-1 CPD ¶ 466. We dismiss this basis of IBI's protest, however, as untimely filed.

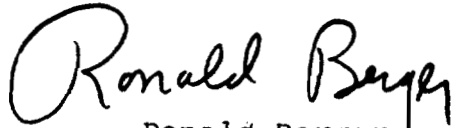
Under our regulations, 4 C.F.R. § 21.2(a)(1), protests concerning alleged ambiguities apparent on the face of an IFB must be filed with either our Office or the contracting agency before bid opening, in this case, July 18. IBI's protest to our Office is clearly untimely,

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<sup>1/</sup>Ordinarily, multiple bids from the same firm may be accepted unless the agency finds that multiple bidding is prejudicial to the interests of the government or other bidders. See Siska Construction Co., B-217066, Feb. 5, 1985, 85-1 CPD ¶ 140.

since it was not filed until July 25. Further, while IBI sent a letter to INS before bid opening<sup>2/</sup> requesting clarification of various provisions in the RFP, this letter, which merely requested that the agency provide answers to seven specific questions concerning the solicitation, did not constitute a protest to the agency. While a letter does not have to explicitly state that it is intended as a protest for it to be so considered, at a minimum the intent to protest must be conveyed by an expression of dissatisfaction and a request for corrective action. See Reeves Brothers Inc., et al., B-212215.2, et al., May 2, 1984, 84-1 CPD ¶ 491. In contrast, where, as here, a letter contains merely a request for clarification, it does not constitute a formal protest. Triple A Shipyards, B-213433, Apr. 6, 1984, 84-1 CPD ¶ 385.

The protest is dismissed.



Ronald Berger  
Deputy Associate  
General Counsel

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<sup>2/</sup> The protester's letter was received by INS on July 15. INS inserted the letter in the bid box, however, on the assumption that it contained a bid. The letter thus was not read until bid opening on July 18.